

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

DONOVAN CHARLES STONER,

Plaintiff,

v.

JAMES STOGNER, et al.,

Defendants.

3:06-CV-00324-LRH-VPC

ORDER

Before the court is Plaintiff Donovan Stoner's motion for reconsideration (#125¹). Defendants have filed an opposition (#127) to which Plaintiff replied (#128).

On July 29, 2008, the court received an ex parte communication from Plaintiff, which the court docketed as a motion for reconsideration. In the motion, Plaintiff asks this court to reconsider its dismissal of Plaintiff's case pursuant to Federal Rule of Civil Procedure 41(a)(1), arguing that his settlement agreement was involuntary. Plaintiff also argues that his voluntary dismissal of the case was obtained through coercion. As to the legal basis for his claim, Plaintiff argues this court should grant him relief from its final judgment pursuant to Federal Rule of Civil Procedure 60(b)(3) because Defendants committed fraud by obtaining a forced signature from Plaintiff and misrepresenting that Plaintiff was voluntarily dismissing his case.

¹Refers to the court's docket.

1 Federal Rule of Civil Procedure 60(b)(3) provides, “On motion and just terms, the court
2 may relieve a party . . . from a final judgment, order, or proceeding for the following reasons: . . .
3 fraud . . ., misrepresentation, or misconduct by an opposing party” The Ninth Circuit has
4 applied the following standard to a motion for reconsideration under rule 60(b)(3):

5 [i]n order to set aside a judgment or order because of fraud upon the court under Rule
6 60(b), it is necessary to show an unconscionable plan or scheme which is designed to
7 improperly influence the court in its decision. The motion to set aside on this ground is
addressed to the sound discretion of the trial court. And the burden is on the moving
party to establish fraud by clear and convincing evidence.

8 *England v. Doyle*, 281 F.2d 304, 309-310 (9th Cir. 1960) (citations omitted).

9 In the present case, Plaintiff has failed to show by clear and convincing evidence that his
10 voluntary dismissal was a product of an unconscionable plan or scheme. While Plaintiff makes
11 various references to “the record,” he offers no evidentiary support in his attached declaration to
12 prove his contentions that the settlement agreement was involuntary and he was coerced into
13 dismissing his case.

14 Finally, Plaintiff also appears to ask for reconsideration of the Magistrate Judge’s July 17,
15 2008, minute order. The court has reviewed the minute order and finds that the magistrate
16 correctly construed Plaintiff’s June 9, 2008, ex parte communication as a motion to enforce
17 settlement. ((#118) at 1) (“I’m simply attempting to see to it that the original terms of settlement,
18 as I understood them to be represented in the Offer of Judgment before the Court, are honored.”).
19 The magistrate was also correct that this court is without jurisdiction to enforce the terms of any
20 settlement agreement among the parties. In *Kokkonen v. Guardian Life Ins. Co.*, 551 U.S. 375,
21 381-82 (1994), the Supreme Court held that federal courts do not have jurisdiction to enforce
22 settlement agreements that precede a plaintiff’s voluntary dismissal unless (1) the settlement
23 contract is expressly embodied in a court’s order of dismissal or (2) the courts retains jurisdiction
24 over a settlement contract. Here, the parties did not even mention a settlement in their Stipulation
25 for Dismissal With Prejudice (*see* (#124)); and this court did not retain jurisdiction over any
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1 settlement contract.

2 IT IS THEREFORE ORDERED that Plaintiff's motion for reconsideration (#125) is
3 DENIED.

4 IT IS SO ORDERED.

5 DATED this 2nd day of February, 2009.

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LARRY R. HICKS
UNITED STATES DISTRICT JUDGE